

Decision for dispute CAC-UDRP-103945

Case number CAC-UDRP-103945

Time of filing 2021-07-23 08:52:32

Domain names biodermalaser.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization NAOS

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Antonio Odoms

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is - among others - the owner of the international trademark registration no. 267207 (registered since 1963) for BIODERMA.

The Complainant also owns domain names incorporating the word BIODERMA, such as <bioderma.com> (since 1997).

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a beauty company established 40 years ago and operating in the skincare sector through the renown brands BIODERMA, INSTITUT ESTHEDERM and ETAT PUR.

The Complainant - which has more than 3.000 employees located around the world through its 48 subsidiaries and sells its branded products BIODERMA in over 90 countries - is the owner of several trademark registrations and domain names consisting in the word BIODERMA.

The Respondent has registered the domain name <biodermalaser.com> only last July 14, 2021. According to the Complainant, the disputed domain name would be a variation of the Complainant's registered trademark BIODERMA, with the addition of word "laser".

The Complainant affirms that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way with the Complainant's business. In particular, the Complainant states that the Respondent is not affiliated with the brand BIODERMA, nor authorized by such company in any way. In addition, The Complainant affirms it currently does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use, or apply for registration of the disputed domain name by the Complainant.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith, as it redirects to a parking page.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT'S TRADEMARK

The Panel finds that the disputed domain name is confusingly similar to the trademark BIODERMA and to the relative domain names registered by the Complainant, which has proven to have prior rights since the '60s.

In particular, the Panel agrees that the mere addition of the word "laser" is not sufficient at all to escape the finding that the domain name is confusingly similar to the trademark BIODERMA.

Sever WIPO and CAC decisions – also involving the present Complainant – confirmed that addition of generic and/or descriptive words do not change the overall impression of the designation as being connected to the Complainant's trademark. They do not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated.

There is no doubt that the same case lies before us in this matter.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark BIODERMA, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

It is undeniable that Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

Given all the above and taken into account the fact that the Respondent did not provide any response within the present proceeding, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <biodermalaser.com>.

THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. This prima facie evidence was not challenged by the Respondent.

The disputed domain name redirects to a parking page and such circumstance would demonstrate that the Respondent has attempt to attract Internet users to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

In the absence of a response from Antonio Odoms and given the reputation of the Complainant and its trademark (see the many decisions cited in the complaint), the Panel infers that the Respondent had the Complainant's trademarks BIODERMA in mind when registering the disputed domain name.

Consequently, the Panel believes that the same was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. BIODERMALASER.COM: Transferred

PANELLISTS

Name	Tommaso La Scala
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DATE OF PANEL DECISION 2021-09-03

Publish the Decision